

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

TRAVIS JAMES WEBB,

Petitioner,

v.

Civil Action No.: 3:08CV732

COMMONWEALTH OF VIRGINIA,

Respondent.

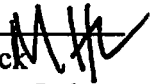
MEMORANDUM OPINION

Petitioner Travis James Webb, a Virginia prisoner proceeding *pro se*, filed a petition for a writ of habeas corpus. On January 9, 2009, Respondent filed a motion to dismiss Petitioner's claims without prejudice, arguing that Petitioner had failed to exhaust his state remedies. On February 19, 2009, Petitioner filed a motion to dismiss his habeas petition.

Because Respondent has filed an answer, Federal Rule of Civil Procedure 41(a)(2) applies. Generally, a petitioner's motion for dismissal without prejudice should not be denied absent substantial prejudice to the respondent. *See Andes v. Versant Corp.*, 788 F.2d 1033, 1036 (4th Cir. 1986). Respondent cannot be prejudiced because it has also moved for dismissal without prejudice for lack of exhaustion of state remedies. Accordingly, Petitioner's motion to dismiss his habeas petition (Docket No. 14) will be GRANTED. Respondent's motion to dismiss (Docket No. 6) will be DENIED AS MOOT. Petitioner's Motion to Proceed with

Petition for a Writ of Habeas Corpus (Docket No. 13) will be DENIED AS MOOT. The action will be DISMISSED WITHOUT PREJUDICE.

An appropriate Order shall issue.

_____/s/ 
M. Hannah Lauck
United States Magistrate Judge

Richmond, Virginia

Date: 3/4/09